

JS-6

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

TIFFANY JACO, et al.,  
Plaintiffs,

v.

CHILDREN'S SERVICES OF  
SHASTA COUNTY, et al.,  
Defendants.

Case No. CV 22-7397 SPG (MRW)

**ORDER DISMISSING ACTION  
WITHOUT LEAVE TO AMEND**

The Court dismisses this action for failure to state a claim and due to the failure of a pro se litigant to respond to a court order.

\* \* \*

1. This is a pro se civil action. In a complaint filed in October 2022, Plaintiff alleged that various county employees and officials in Shasta County improperly took her children into care. Plaintiff purported to file the complaint on behalf of herself and other family members. (Docket # 1.)

1           2.     After the assigned district judge granted in forma pauperis  
2 status to Plaintiff, the matter was referred to Magistrate Judge Wilner for  
3 screening and other pretrial proceedings. Pursuant to 28 U.S.C. § 1915(e),  
4 Judge Wilner issued an order to show cause why Plaintiff's case should not  
5 be dismissed. (Docket # 10.) In the OSC, the magistrate judge noted  
6 numerous pleading defects with Plaintiff's complaint. These were that:  
7 (1) Plaintiff (a non-lawyer) brought the lawsuit on behalf of unrepresented  
8 minors; (2) the complaint likely named immune parties (a superior court  
9 judge and county personnel); (3) Plaintiff improperly sought federal court  
10 review of acts that occurred in state court child removal proceedings;  
11 (4) the rambling complaint was not a "short and plain statement of the  
12 claim" as required by Federal Rule of Civil Procedure 8; and (5) Plaintiff  
13 likely filed her complaint in the wrong venue.

14           3.     The OSC gave Plaintiff until March 1, 2023, to: explain why  
15 the matter should not be dismissed or transferred; voluntarily dismiss the  
16 case; or face involuntary dismissal of the action. Plaintiff failed to file any  
17 response to the order. Since the inception of the action, Plaintiff has not  
18 filed any documents with the Court.

19                                 \* \* \*

20           4.     Under 28 U.S.C. § 1915(e)(2), a court is required to dismiss any  
21 action if it is determined that an action is frivolous, malicious, fails to state  
22 a claim for relief, or seeks monetary relief against an immune party.

23           5.     Rule 41(b) provides that if a plaintiff "fails to prosecute or to  
24 comply with these rules or a court order, a defendant may move to dismiss  
25 the action or any claim against it." Dismissal also may be ordered by the  
26 Court sua sponte. Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962).

6. Rule 41(b) specifically authorizes a court to dismiss a civil action when a plaintiff has not filed a required pleading “after being given leave to do so.” Harris v. Magnum, 863 F.3d 1133, 1142 (9th Cir. 2017). Rule 41(b) applies when a court “mandate[s] the filing” of a pleading and “indicate[s] that failure to do so would result in dismissal” under the rule. Applied Underwriters, Inc. v. Lichtenegger, 913 F.3d 884, 892 (9th Cir. 2019).

7. Dismissal of a civil action under Rule 41 may be appropriate to advance the public's interest in the expeditious resolution of litigation, the court's need to manage its docket, and to avoid the risk of prejudice to defendants. Omstead v. Dell, Inc., 594 F. 3d 1081, 1084 (9th Cir. 2010). Additionally, a court should consider the public policy favoring disposition of cases on their merits and the availability of less drastic alternatives in its evaluation. Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

\* \* \*

8. In the present action, the Court concludes that dismissal of the action is appropriate. On its face, the complaint suffers from numerous pleading problems that make it unlikely that Plaintiff could plausibly proceed with the action and obtain relief.

9. Moreover, Plaintiff failed to respond to the magistrate judge's screening order. As a result, Plaintiff has not properly explained why her case should not be dismissed. Other than her original complaint and her IFP documentation, Plaintiff has failed to file anything else with the Court since the commencement of this civil action. Plaintiff's failure to do so demonstrates that she has no interest in advancing the action here.

10. By contrast, the Court, the defense, and the public have a strong interest in terminating this action. This is particularly true given

1 that Plaintiff effectively chose not to pursue her case by failing to comply  
2 with Judge Wilner's OSC. Furthermore, because Plaintiff is a pro se  
3 litigant who has not advanced the action, no sanction short of dismissal  
4 will be effective in moving this case forward. Carey, 856 F.2d at 1440.

5 11. The Court concludes that dismissal is appropriate. Applied  
6 Underwriters, 913 F.3d at 892. Dismissal under Rule 41(b) ordinarily  
7 "operates as an adjudication on the merits" of a claim. However, because of  
8 the nature of the allegations and because the Central District is likely not  
9 the correct judicial district to take up Plaintiff's claims against Shasta  
10 County authorities, the Court exercises its discretion to dismiss the action  
11 without prejudice and without leave to amend.

12 12. The Clerk is directed to close the action.

13 IT IS SO ORDERED.

14  
15  
16 Dated: May 1, 2023



HON. SHERILYN P. CARNETT  
UNITED STATES DISTRICT JUDGE

17  
18  
19 Presented by:



HON. MICHAEL R. WILNER  
UNITED STATES MAGISTRATE JUDGE